

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA
EX REL. WAYNE STENEHJEM,
ATTORNEY GENERAL,

Petitioner,

-v-

E MARKETING SERVICES, INC.

Respondent.

Civil No. **08C2521**

ORDER OF APPROVAL

CPAT 080279.001

Pursuant to the authority of this Court provided in N.D.C.C. § 51-15-06.1,

IT IS HEREBY ORDERED that the attached Assurance of Voluntary Compliance
is approved as an assurance of discontinuance as specified in N.D.C.C. § 51-15-06.1.

The Clerk of Court shall receive and file this Assurance of Voluntary Compliance.

Dated this 7th day of October, 2008.

BY THE COURT:


Judge of the District Court

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Clk. of Crt. Burleigh Co.

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

BURLEIGH COUNTY

SOUTH CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA EX REL
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Civil No. **08C2521**

Petitioner,

**ASSURANCE OF
VOLUNTARY COMPLIANCE**

-VS-

E MARKETING SERVICES, INC.

Respondent.

CPAT 080279.001.

To: E MARKETING SERVICES, INC.
5200 N. Federal Hwy., Ste. 2-1231
Fort Lauderdale, FL 33308-3253

and

2400 NW 62nd St., Ste. 200
Fort Lauderdale, FL 33309

WHEREAS Wayne Stenehjem, Attorney General of the State of North Dakota (hereinafter "the Attorney General"), acts in the public interest pursuant to North Dakota Century Code ("N.D.C.C.") ch. 51-28 (commonly referred to as the "Do Not Call Law"); and

WHEREAS the Attorney General has determined that in the public interest an investigation should be conducted into the activities of Respondent to ascertain whether violations of ch. 51-28 have occurred; and

WHEREAS N.D.C.C. ch. 51-28, specifically N.D.C.C. § 51-28-02, prohibits certain calls using automatic dialing-announcing devices ("prerecorded messages" or "robo-calls") to telephone subscribers in North Dakota; and

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WHEREAS the Attorney General has received consumer complaints and/or other information alleging Respondent engaged in prerecorded message calls contrary to North Dakota law; and

WHEREAS as a result of this investigation the Attorney General alleges, among other things, Respondent has violated N.D.C.C. § 51-28-02; and

WHEREAS the parties desire to settle this matter without litigation and without an admission of liability;

NOW THEREFORE It is hereby agreed:

1. This Assurance of Voluntary Compliance shall constitute the statutory assurance of discontinuance as provided in N.D.C.C. § 51-15-06.1. Respondent acknowledges *in personam* jurisdiction in North Dakota and agrees the forum of any action in connection with this agreement shall be in the state courts of North Dakota. Nothing in this Assurance of Voluntary Compliance is, or may be represented as, an approval or endorsement of Respondent or its business practices, nor a grant of any affirmative right to Respondent. Nothing in this Assurance of Voluntary Compliance is intended to waive any rights or private remedies available to consumers. *See also* N.D.C.C. § 51-15-09.

2. Respondent, including its directors, officers, partners, associates, principals, employees, agents, contractors, servants and all other persons in active concert or participation with them, directly or indirectly, voluntarily agrees to be and is permanently enjoined from making telephone calls in violation of N.D.C.C. ch. 51-28.

3. Respondent agrees it will comply with this Assurance of Voluntary Compliance and further acknowledges and agrees any violations of this Assurance of Voluntary Compliance shall be punishable as contempt of court pursuant to N.D.C.C. ch. 27-10 and

Respondent further may be subject to all other civil penalties and sanctions provided by law, including attorney fees and costs. Respondent agrees to pay a civil penalty of at least \$1,000 per violation for any violations of this Assurance of Voluntary Compliance, or any future violations of N.D.C.C. ch. 51-28; provided, however, the Attorney General shall not be precluded from seeking more than \$1,000 per violation, or any other remedies provided in N.D.C.C. chs. 51-15 or 51-28, or other North Dakota law.

4. If Respondent is adjudged in contempt of court for violations of this Assurance of Voluntary Compliance, adjudged in violation of this Assurance of Voluntary Compliance or adjudged in violation of N.D.C.C. ch. 51-28, Respondent shall also be responsible for payment to the Attorney General for reasonable investigation costs, expenses and attorney fees.

5. Upon execution of this Assurance of Voluntary Compliance by Respondent, Respondent shall make a payment to the Attorney General in the sum of **\$1,000** in lieu of civil penalties, investigation costs and attorney fees. Payment shall be a check or money order made payable to **Office of Attorney General – North Dakota**, and delivered to:

Consumer Protection
& Antitrust Division
Office of Attorney General
4205 State Street
Bismarck, ND 58503-0623
Attn: JPTThomas

Any payment not timely received is deemed delinquent and a material violation of this Assurance of Voluntary Compliance.

6. In consideration for Respondent's payment in lieu of civil penalties and execution of this Assurance of Voluntary Compliance, and contingent upon full compliance with this Assurance of Voluntary Compliance, the State of North Dakota through the

Attorney General hereby releases Respondent from any and all of the Attorney General's Do Not Call Law liability claims, demands, damages, suits, actions, claims for relief and causes of action, whether known or unknown, arising out of the telephone calls at issue and/or any telephone calls made prior to September 22, 2008.

7. In the event of a breach of this Assurance of Voluntary Compliance, the Attorney General may make application to a State of North Dakota District Court to have the entire amount still owing under the Assurance of Voluntary Compliance entered as a formal judgment so it may be filed on the judgment roll and docketed pursuant to North Dakota law, or to seek relief for violations of this Assurance of Voluntary Compliance. See N.D.C.C. §§ 28-20-11, -12 and -13. Respondent agrees that an Affidavit of Non-Compliance of the Office of Attorney General shall be *prima facie* evidence of each violation of this Assurance of Voluntary Compliance.

8. Respondent represents the signer below is competent and fully authorized to act on behalf of Respondent. Respondent acknowledges it has been provided the opportunity to review this Assurance of Voluntary Compliance with an attorney, understands the implications and obligations imposed by it and has knowingly, freely and willingly entered into this Assurance of Voluntary Compliance rather than contest the issue on the merits in court. Respondent further acknowledges and agrees this Assurance of Voluntary Compliance may be approved by and filed with the District Court without any further notice or hearing. Signatures transmitted electronically or via facsimile by Respondent shall be deemed the equivalent of original signatures; this document may be executed in counterparts, with each counterpart deemed an original.

Dated this 01 day of October, 2008.

E MARKETING SERVICES, INC.

(including all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

By: Hale Cammarma

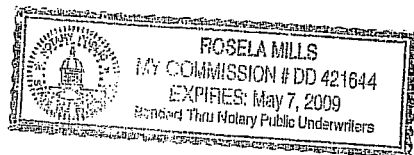
Its: CEO

STATE OF FLORIDA)
) ss
COUNTY OF Broward)

Subscribed and sworn to before me this

1st day of October, 2008.

Rosela Mills
Notary Public



This Assurance of Voluntary Compliance is hereby received and accepted.

Dated this 22 day of October, 2008.

STATE OF NORTH DAKOTA

Wayne Stenehjem
Attorney General

By: 

James Patrick Thomas
ID No. 06014
Assistant Attorney General
Consumer Protection and
Antitrust Division
Office of Attorney General
4205 State Street
PO Box 1054
Bismarck, ND 58502-1054
(701) 328-5570

Attorneys for Petitioner